

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7398

BILL NUMBER: HB 1454

NOTE PREPARED: Jan 18, 2011

BILL AMENDED:

SUBJECT: State Plan for Representation of Indigent Children.

FIRST AUTHOR: Rep. Crawford

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (1) Establishes a statutory right to counsel for a child who is alleged or adjudicated to be a child in need of services or the subject of a parent-child termination proceeding.
- (2) Establishes the Office of the State Juvenile Public Defender.
- (3) Provides for representation of indigent children in cases filed in a juvenile court under a plan developed by the Office of the State Juvenile Public Defender and approved by the Supreme Court.
- (4) Prohibits a child from waiving counsel unless certain criteria are met.
- (5) Provides that if a child waives counsel, the court shall: (a) appoint standby counsel for the child; and (b) offer the child counsel at each later stage of a court proceeding.
- (6) Provides for counties to distribute to the state the average net amount (after deducting certain reimbursements) that the counties spent for these services over a five-year period.
- (7) Makes an appropriation.

Effective Date: Upon passage; July 1, 2011; January 1, 2012.

Summary of NET State Impact: This bill is expected to increase state expenditures by approximately \$11.4 M a year to provide an Office of the Juvenile Public Defender. However, this amount is expected to be offset from reimbursements provided by counties for the state costs of representing children in child in need of services (CHINS) cases, termination of parent-child relationship cases, and juvenile delinquency cases.

The bill is also expected to decrease the workload of the Office of the State Public Defender to the extent legal representation was provided to children in juvenile delinquency cases. Actual decreases in workload

are unknown.

The bill will also increase the expenditures of the Department of Local Government Finance (DLGF) by approximately \$44,000 per year.

Explanation of State Expenditures: This bill creates the Office of the State Juvenile Public Defender. The salary of the State Juvenile Public Defender, the salaries of all support staff, and the costs of facilities to house the Office of the State Juvenile Public Defender are to be paid from the state General Fund.

The cost of establishing the Office of the State Juvenile Public Defender is expected to be a maximum of \$11.4 M per year. The bill requires counties to reimburse the state 100% of the costs of juvenile representation (as determined by the Department of Local Government Finance) provided by the Office of the State Juvenile Public Defender (50% of the state costs will be paid to the state every July and January starting in January of 2012). [Note: For more information see *County Reimbursement*, below.]

The bill will *allow* courts with juvenile jurisdiction to appoint legal counsel to represent a child in the following cases: (1) child in need of services, (2) termination of parent-child relationship, or (3) juvenile delinquency, if the parent or guardian of the estate of a child or the child is indigent. By allowing (and not requiring) a court to appoint legal counsel, actual expenditures and workload of the State Juvenile Public Defender may be less than estimated. Actual workload and state expenditures will depend on the decisions of the court to appoint legal counsel.

Start-Up Costs: Actual start-up costs are unknown and will depend on administrative and legislative actions. The Office of the State Juvenile Public Defender is required to be established by July of 2011. The first county reimbursement for services will be received by January 2012. The state would therefore be required to finance the first six months of the operation of the Office of the State Juvenile Public Defender which would then be reimbursed by the counties. The start-up costs for the Office of the State Juvenile Public Defender are expected to be \$5.7 M during the first six months of operation (during the first half of FY 2012).

County Reimbursement: It should be noted that the reimbursement amount provided by the counties will be based on the 5-year average annual expenditure of providing legal representation to juvenile offenders and CHINS for all counties. To the extent the reimbursement amount calculated by the Department of Local Government Finance (DLGF) is greater than the actual expenses of the State Juvenile Public Defender, state revenue will be greater than expenses for legal representation. However, in much the same manner, the reimbursement amount calculated by DLGF may be less than the actual expenses of the State Juvenile Public Defender. To this extent, state expenditures will increase.

The Division of State Court Administration estimates the total annual cost of all Indiana counties for juvenile delinquent, CHINS, and termination of parent-child relationship cases for CY 2009 was approximately \$11.4 M. Therefore, the *maximum* state cost to provide legal representation to children is estimated to be \$11.4 M. [This estimate assumes all juvenile delinquent, CHINS, and termination of parent-child relationship cases will receive court-ordered representation by the Office of the Juvenile Public Defender.]

Effect on the State Public Defender: Currently, only a child charged with a delinquent act or a parent who is named in the termination of a parent-child relationship are entitled to counsel. The bill adds CHINS and children who are the subject of a termination of a parent-child relationship to the list of individuals who are entitled to legal counsel. This bill is expected to transfer the workload of the State Public Defender to the

Juvenile Public Defender to represent juvenile offenders. The Juvenile Public Defender will have the additional responsibility to provide representation to CHINS and children named in termination of parent-child relationship proceedings.

Department of Local Government Finance: The requirements this bill places on the DLGF are expected to require an additional position with a starting salary and benefits of approximately \$44,000 per year.

The bill requires DLGF to determine the average annual expenditure of all counties to provide legal representation to juvenile offenders and CHINS for a uniform, statewide 5-year period after deducting a reimbursable amount. The reimbursable amount includes the (1) amount received (or likely to be received) for the legal services from the Supplemental Public Defender Services Fund, (2) collections (or likely to be collected) for the legal services from parents, custodians, or guardians, or (3) amount received (or likely to be received) for the legal services from the federal government. The DLGF is also required to certify this amount to the county auditor, the State Budget Agency, the Treasurer of the State, and the State Juvenile Public Defender.

After December 31, 2011, on June and December of each year, a county is required to distribute to the Treasurer of State (for deposit in the General Fund) 50% of the certified amount calculated by DLGF for state reimbursement for juvenile legal services provided by the Juvenile Public Defender. For counties that fail to make the required payment, the Treasurer of State is required to notify the State Budget Agency and the Auditor of State to withhold any amount of funds that would normally be distributed to the county through the state in an amount not to exceed the payment amount the county neglected to make.

These provisions are expected to (1) increase the workload of the DLGF and the Treasurer of State, (2) increase revenue to the General Fund from county reimbursement for legal representation provided by the State Juvenile Public Defender, and (3) offset state costs of providing legal representation to CHINS and juvenile offenders.

Explanation of State Revenues: The bill establishes that a parent or guardian of the estate of a child or a child who is the subject of a CHINS or juvenile delinquency case is financially responsible for legal services provided by the Juvenile Public Defender. The court may order payment of these expenses if at any time the court determines the child or parent/guardian of the child has sufficient financial means to pay for these legal representation costs. Any payments made to counties for the cost of services provided by the Juvenile Public Defender are required to be forwarded to the state for deposit in the General Fund.

The bill also provides that counties are to reimburse 100% of the certified costs for juvenile legal services provided by the Juvenile Public Defender (two payments of 50% of the average costs of providing legal representation). The Division of State Court Administration estimates the total annual cost of all Indiana counties for juvenile delinquent, CHINS, and termination of parent-child relationship cases for CY 2009 was approximately \$11.4 M. This provision of the bill could result in the state receiving a maximum of \$5.7 M in expenditure reimbursement from counties (assuming the Office of the State Juvenile Public Defender provides representation in all juvenile cases).

Explanation of Local Expenditures: Counties will be required to reimburse the state 100% of the costs of juvenile representation provided by the Office of the State Juvenile Public Defender. This bill is expected to require counties to transfer a maximum of \$11.4 M per year (or approximately \$124,000 per county) to the state for the costs of juvenile representation.

Effect on GAL/CASA Program: This bill may potentially decrease local expenditures to the extent the Juvenile Public Defender represents children that otherwise would have received legal representation from either the local public defender, a Guardian Ad Litem (GAL), or a Court-Appointed Special Advocate (CASA). The average cost per child who receives GAL/CASA representation under the current system is approximately \$580 to \$800 annually. Total decreases in local expenditures are indeterminable.

Additional Information: For FY 2011, the GAL program received an appropriation of \$2.97 M from the General Fund. The Division of State Court Administration reports there are not enough GAL/CASA representatives to provide representation to youth in preventative programs even if the representation was at the option of the court. As of December 2009, there were approximately 4,000 CHINS waiting for GAL/CASA representation. Currently, GAL/CASA representation is not required until a child is determined to be a CHINS.

Explanation of Local Revenues:

State Agencies Affected: Division of the State Court Administration, Indiana Supreme Court; DLGF; Treasurer of State.

Local Agencies Affected: All counties and local juvenile courts.

Information Sources: Mary DePrez, Division of State Court Administration; Amanda Stanley, DLGF; Leslie Dunn, Division of State Court Administration.

Fiscal Analyst: Bill Brumbach, 232-9559.